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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [REDACTED] Office: Vermont Service Center

Date: MAY 01 2002

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER: [REDACTED]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Roenig
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. An appeal was dismissed by the Associate Commissioner for Examinations. The matter is again before the Associate Commissioner on motion to reconsider. The motion will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ her as a lay "missionary evangelist" at a salary of \$650 per month.

The petitioning church filed a Form I-360 petition for special immigrant classification on January 13, 1998. The center director denied the petition citing two grounds of ineligibility. The director found that the petitioner failed to establish that the beneficiary had been continuously carrying on a religious occupation for at least the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(1) and failed to adequately establish that the position of missionary evangelist was a traditional religious occupation as defined at 8 C.F.R. 204.5(m)(2).

The petitioner filed an appeal from the decision. In a decision dated March 21, 2000, the Associate Commissioner, by and through the Director, Administrative Appeals Office ("AAO"), dismissed the appeal finding that the petitioner had failed to overcome the grounds for denial. The AAO further found that the petition was deficient on three additional grounds of ineligibility. The AAO decision found that the petitioner failed to establish that the beneficiary was a member of the petitioner's denomination for at least the two years preceding the filing of the petition pursuant to 8 C.F.R. 204.5(m)(3)(ii)(A), failed to establish that the church had the ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2), and failed to establish that the church had tendered a qualifying job offer pursuant to 8 C.F.R. 204.5(m)(4).

On motion, counsel for the petitioner submitted a brief disputing the analysis applied in the AAO decision.

According to 8 C.F.R. 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. In order to prevail on a motion for reconsideration, a petitioner must establish that the prior decision rests on an incorrect application of law, so that the decision "was incorrect based on the evidence of record at the time of the initial decision." *Id.* According to 8 C.F.R. 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

In regard to the status of the position as a religious occupation, the AAO upheld the finding that the petitioner failed to establish that the proposed position of missionary evangelist was a qualifying religious occupation as defined at 8 C.F.R. 204.5(m)(2). In the decision the regulations were interpreted to require a showing that the position is traditionally a full-time salaried position requiring specific theological training in the petitioner's denomination. The AAO found that the petitioner failed to submit evidence showing that the proposed position met this standard. The decision further noted that there was no evidence to demonstrate that the church had ever employed a person in this capacity in the past.

On motion, counsel argued that the AAO failed to consider a letter from an elder of the church who testified that the position of *Chun Do Sa* (missionary) "is very important to our church" and that the church testified that it had employed the beneficiary in this capacity since her entry into the United States in April 1997. Citing Everson v. Board of Educ. of Ewing Tp., 330 U.S. at 15-16, 67 S. Ct. at 511 (1947), counsel further argued that, "It is impermissible for the Director to decide whether it is appropriate for the petitioning church or any other church to pay or not to pay a particular church employee."

The argument is not persuasive. The regulation is worded in a broad manner. It defines a religious occupation as a "traditional religious function" and provides a brief list of examples. 8 C.F.R. 204.5(m)(2). In interpreting its own regulation, the Service must distinguish, in part, between common participation in the religious life of a church performed voluntarily by members of its congregation and lay persons engaged in a religious occupation. It is traditional in many religious organizations for members to volunteer a great deal of their time serving on committees, visiting the sick, serving in the choir, teaching children's religion classes, and assisting the ordained ministry without being considered to be carrying on a religious occupation. The Service therefore requires some evidence that the position is traditionally a permanent full-time salaried position, as opposed to a traditionally part-time voluntary one requiring no specific religious training. The petitioning church in this matter failed to show that it had any tradition of employing a full-time missionary/*Chun Do Sa* or that the position was traditionally a permanent salaried position with any similar denomination. The letter from an official of the church attesting to the importance of the function is considered, but is insufficient to satisfy the regulatory requirement. To establish that a position is qualifying and that an alien is qualified in such a religious position, acceptable evidence includes a letter from a Superior of Principal of the denomination in the United States. See Matter of Varughese, 17 I&N Dec. 399 (BIA 1980).

Contrary to counsel's argument, the Service does not seek to interfere with the personnel practices of any religious organization. However, the Service is mandated and authorized to administer the immigration laws. Determining the status or the duties of an individual within a religious organization is not a matter under the Service's purview; determining whether that individual qualifies for status or benefits under our immigration laws is another matter. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. Matter of Hall, 18 I&N Dec. 203 (BIA 1982); Matter of Rhee, 16 I&N Dec. 607 (BIA 1978). Accordingly, the argument that the AAO decision was violative of the free exercise of religion clause of the First Amendment of the United States Constitution is not supported by pertinent precedent.

In regard to the two-year prior experience requirement, the AAO further upheld the finding that the petitioner failed to establish that the beneficiary had been continuously employed as a missionary evangelist from at least January 1996 to January 1998. The petitioner asserted that the beneficiary had been employed by a foreign church, the [REDACTED] from March 1992 to April 1997 and by the petitioner from May 1997 through the date the petition was filed.

The AAO found, in pertinent part, that there was no objective evidence of continuous employment with the foreign church. The AAO further found that the claim that the petitioner paid the beneficiary in cash, due to the fact that she was not authorized for employment in the United States, and therefore had no evidence of the payments did not relieve the petitioner from its burden of documenting its claim that it had continuously employed her from May 1997 to January 1998. The AAO determined that the petitioner's own uncorroborated claim of having employed the beneficiary was insufficient to satisfy the burden of proof.

On motion, counsel argued that the letters from church officials should satisfy the burden of proof. Counsel further argued that the Service impermissibly interpreted the regulations to reject a claim of volunteer work from satisfying the two-year experience requirement.

The argument is not persuasive. In finding the uncorroborated testimony of the church official insufficient, the AAO relied on Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The simple submission of uncorroborated statements from officials of the petitioning church is not sufficient to satisfy the burden of proof.

In the decision, the AAO rejected volunteer work from satisfying the requirement. The AAO's interpretation of the regulations was explained in detail. Contrary to counsel's assertion, the AAO interpreted the existing regulations in light of a specific fact pattern. The interpretation was not the promulgation of a new rule requiring notice and comment pursuant to the provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. § 553. The AAO is designated by the Associate Commissioner to exercise appellate jurisdiction over visa petitions, including special immigrant petitions. 8 C.F.R. 103.1(f)(3)(iii)(B).

In regard to the two-year denominational membership requirement, the AAO further held that the petitioner was an independent inter-denominational church and that it is treated as a denomination for the purpose of special immigrant classification pursuant to 8 C.F.R. 204.5(m)(2). Based on the petitioner's claim that the beneficiary joined the petitioning church in May 1997, the AAO found that the beneficiary did not have the requisite two years of membership in the petitioner's denomination.

On motion, counsel argued, in pertinent part, that the petitioner and the [REDACTED] are both members of the Presbyterian denomination and thereby the beneficiary has the requisite two years of denominational membership.

As noted in the appellate decision, the petitioner submitted no evidence from an authority of the governing body of any Presbyterian denomination in the United States showing that the two churches are members of the same denomination. Counsel argued that their similarity as Protestant churches is "easily observable," but failed to submit any documentation showing that the AAO determination was incorrect as a matter of fact. The assertions of counsel do not constitute evidence. Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988); Matter of Laureano, 19 I&N Dec. 1 (BIA 1983); Matter of Ramirez-Sanchez, 17 I&N Dec. 503 (BIA 1980). Religious denominations have procedures for recognizing churches as member churches and providing verification of such recognition is normally a routine matter. The petitioner in this matter did not provide such documentation. The petitioning church has failed to establish that it is a recognized member of a Presbyterian denomination in the United States and that the denomination also recognizes the foreign church as an affiliate. Therefore, this issue has not been overcome.

Administrative notice is made that counsel submitted a copy of the by-laws of the Assemblies of God denomination. The purpose of this submission in establishing that the petitioner is a member of a Presbyterian denomination was not explained. This tends to contradict the claim that the petitioner is a recognized member church of a Presbyterian denomination.

In regard to the financial resources of the church, the AAO further held that the petitioner failed to submit the church's annual reports, federal tax returns, or audited financial statements required to establish its ability to pay the proffered wage pursuant to 8 C.F.R. 204.5(g)(2).

On motion, counsel asserted that it now submits the petitioner's annual reports for 1998 to 2000. The record reveals, however, that the "annual reports" were handwritten, Korean-language financial summaries that do not meet the standard for annual reports of non-profit organizations under generally accepted accounting principles (GAAP). Therefore, the petitioner has not overcome this finding.

In regard to the job offer, the AAO further held that the petitioner failed to provide any description of the beneficiary's means of financial support and thereby failed to establish that she would subsist on the proffered \$650 per month without resort to supplemental employment pursuant to 8 C.F.R. 204.5(m)(4).

On motion, counsel argued that the regulations do not require a description of the financial needs of a beneficiary. Counsel asserted that the beneficiary and her husband earn sufficient income to support their family. Counsel submitted, in part, a copy of the beneficiary's 1998 federal joint income tax return reflecting \$10,400 in wages and \$10,620 in business income. There is no indication whether these figures represent the \$7,800¹ in business income the beneficiary allegedly received as salary from the church. Counsel argued that, "in light of every indication that they are otherwise tax-paying, law abiding members of the community" there is no basis for examining their financial status.

Counsel's argument is not persuasive. First, the record reflects that the beneficiary and her husband both violated the terms of their visa status and have been employed without authorization in the United States. There is no evidence that the beneficiary's "cash" salary from the church has been reported to the Internal Revenue Service as income. Therefore, the claim that the beneficiary is "law-abiding and tax-paying," and that her self-serving uncorroborated statements claiming that she has been a paid employee of the church should be accepted, is not persuasive.

Counsel is correct that the regulation does not specify the means by which a petitioner must demonstrate that the requirements of a valid job offer have been satisfied. However, as discussed above, the argument that the petitioner's own uncorroborated testimony is sufficient to satisfy this requirement is not persuasive. See Matter of Treasure Craft of California, *supra*.

¹ \$650 per month x twelve months equals \$7,800.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The motion is dismissed.